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United States Attorney

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Attorneys for United States of America

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 DONALD KEITH ELLISON,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.

) **CASE NO. 3:19-MC-80167 JST**

) **UNITED STATES'S OPPOSITION TO AND**
) **REQUEST TO DISMISS PLAINTIFF'S**
) **MOTION FOR RETURN OF PROPERTY AND**
) **REQUEST FOR JUDICIAL NOTICE**

18
19 Pursuant to Evidence Code § 201, defendant United States of America hereby requests that this
20 Court take judicial notice of the public records attached hereto and incorporated herein.
21

- 22 1. The Verified Complaint for Forfeiture In Rem, filed under seal on July 18, 2019 as docket
23 no. 2 in United States v. \$1,000,000.00 Contained in Charles Schwab, et. al., 19-CV-1693
24 ADC. A true and correct copy of this complaint is attached hereto as Attachment A.
- 25 2. The Motion to Unseal Civil Forfeiture Complaint, filed on July 24, 2019 as docket no. 8 in
26 United States v. \$1,000,000.00 Contained in Charles Schwab, et. al., 19-CV-1693 ADC. A
27 true and correct copy of this motion is attached hereto as Attachment B.
28

- 1 3. ORDER granting Motion to Unseal Document 8 filed on July 25, 2019 as docket entry no.
2 10. A true and correct copy of this motion is attached hereto as Attachment C.
- 3 4. Notice of Verified Claim and Statement of Interest, filed by Donald Keith Ellison on August
4 16, 2019 as docket entry no. 11-1. A true and correct copy of this motion is attached hereto
5 as Attachment D.

6 These documents are public records on file with the U.S. District Court, District of Puerto Rico,
7 and are capable of immediate and accurate verification through PACER.

8 The grounds for this request are that the Court is empowered to take judicial notice of documents
9 filed in court proceedings. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo,*
10 *Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (holding a court “may take notice of proceedings in other courts,
11 both within and without the federal judicial system, if those proceedings have a direct relation to matters
12 at issue.”); *Mangiaracina v. Penzone*, 849 F.3d 1191, 1194 (9th Cir. 2017) (taking judicial notice of six
13 state court indictments and docket sheet in a related criminal case in the United States District Court for
14 the District of Arizona); *United States v. Sperow*, 18-CV-01186-VAP, 2018 U.S. Dist. LEXIS 179453,
15 *3 n.3 (C.D. Cal. 2018) (taking judicial notice of an indictment, plea agreement, and forfeiture
16 documents filed in a criminal case in the District of Idaho); *Yee v. Select Portfolio, Inc.*, No. 18-CV-
17 02704-LHK, 2018 U.S. Dist. LEXIS 169553, , *1 n.2 (N.D. Cal. 2018) (“Public records, including
18 judgments and other publicly filed documents, are proper subjects of judicial notice.”).

19
20 DATED: 08/19/19

Respectfully submitted,

21 DAVID L. ANDERSON
22 United States Attorney

23 _____/S/_____
24 DAVID COUNTRYMAN
25 Assistant United States Attorney
26
27
28

Attachment A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

v.

CIVIL NO. 19-**CV-1693(ADC)**

- a. **\$1,000,000.00** contained in Charles Schwab & Co., Inc. account **#9991-8933**, in the name of Donald Keith ELLISON, seized on April 26, 2019;
- b. **\$3,425,512.93** contained in Charles Schwab & Co., Inc. account **#9991-8933**, in the name of Donald Keith ELLISON, seized on June 18, 2019;
- c. One (1) **Myco Boat Trailer Vin #1M9BA4031JB817150**;
- d. One (1) **Caterpillar Model D5K2LGP Tractor, Serial Number KYY01200**;
- e. One (1) **Caterpillar Model 320EL Hydraulic Excavator, Serial Number WBK02864**;
- f. **\$71,551.40** contained in checking account number **855356700** at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- g. **\$276,583.84** contained in savings account number **3653269077** at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- h. **\$100,306.70** contained in savings account number **317222591** at JP Morgan Chase, account is in the name of Keith Ellison and Jaklyn F. Garrett;
- i. One (1) **2018 Invincible 40-foot catamaran Hull #IVBC0035B818**;
- j. One (1) **2018 Ford F-150 "XL" crew cab pickup truck, VIN #1FTEW1E50JFB84787**,

Defendants.

VERIFIED COMPLAINT FOR FORFEITURE IN REM

TO THE HONORABLE COURT:

COMES NOW, plaintiff, the United States of America, by and through its undersigned

attorneys, Rosa Emilia Rodríguez-Vélez, United States Attorney for the District of Puerto Rico, Héctor E. Ramírez-Carbó, Assistant United States Attorney, Chief, Civil Division, and David O. Martorani-Dale, Assistant United States Attorney bring this complaint and allege as follows in accordance with Supplemental Rule G(2) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

NATURE OF THE ACTION

1. This is a civil action in rem brought to enforce the provisions of Title 18, United States Code, Section 981(a)(1)(C); Title 18, United States Code, Section 981(a)(1)(D); Title 28, United States Code, Section 2461(c); Title 18, United States Code, Section 1031; Title 18, United States Code, Section 371; Title 18, United States Code, Section 201; Title 18, United States Code, Section 982(a)(3)(C); and Title 18, United States Code, Section 984 .

DEFENDANT IN REM

2. The defendant property seized by Federal Bureau of Investigations (“FBI”) agents consists of:

- a. **\$1,000,000.00** contained in Charles Schwab & Co., Inc. account #9991-8933, in the name of Donald Keith ELLISON, seized on April 26, 2019;
- b. **\$3,425,512.93** contained in Charles Schwab & Co., Inc. account #9991-8933, in the name of Donald Keith ELLISON, seized on June 18, 2019;
- c. One (1) **Myco Boat Trailer Vin #1M9BA4031JB817150;**
- d. One (1) **Caterpillar Model D5K2LGP Tractor, Serial Number KYY01200;**
- e. One (1) **Caterpillar Model 320EL Hydraulic Excavator, Serial Number WBK02864;**
- f. **\$71,551.40** contained in checking account number **855356700** at JP Morgan Chase, account is in the name of Donald Keith Ellison;

- g. **\$276,583.84** contained in savings account number **3653269077** at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- h. **\$100,306.70** contained in savings account number **317222591** at JP Morgan Chase, account is in the name of Keith Ellison and Jaklyn F. Garrett;
- i. One (1) **2018 Invincible 40-foot catamaran Hull #IVBC0035B818**;
- j. One (1) **2018 Ford F-150 "XL" crew cab pickup truck, VIN #1FTEW1E50JFB84787**.

JURISDICTION AND VENUE

- 3. This Court has subject matter jurisdiction over an action commenced by the United States Title 28 United States Code, Section 1345; over an action for forfeiture pursuant to Title 28 United States Code, Section 1355; and over this particular action pursuant to Title 18 United States Code, Sections 981 and 984.
- 4. This Court has in rem jurisdiction over the defendant property pursuant to Title 28 United States Code, Section 1355(b)(1)(A) (acts and omissions giving rise to the forfeiture occurred in this district) and 1355(d) (any court with jurisdiction over a forfeiture action pursuant to subsection (b) may issue and cause to be served in any other district such process as may be required to bring before the court the property that is the subject of the forfeiture action).
- 5. Venue is proper in this district pursuant to Title 28 United States Code, Section 1355(b)(1)(A) (acts and omissions giving rise to the forfeiture occurred in this district) and Section 1395 (property seized outside any judicial district may be prosecuted in any district into which the property is brought).

BASIS FOR FORFEITURE

6. This is a civil action in rem brought to enforce the provisions of Title 18, United States Code, Section 981(a)(1)(C); Title 18, United States Code, Section 981(a)(1)(D); Title 28, United States Code, Section 2461(c); Title 18, United States Code, Section 1031; Title 18, United States Code, Section 371; Title 18, United States Code, Section 201; Title 18, United States Code, Section 982(a)(3)(C); and Title 18, United States Code, Section 984.

FACTS

7. The facts and circumstances supporting the seizure and forfeiture of the defendant property are contained in the Title 28, United States Code, Section 1746 unsworn declaration of the FBI, Special Agent, Juan C. Lopez attached hereto, and incorporated herein as if fully stated.

CLAIM FOR RELIEF

WHEREFORE, the United States of America prays that a warrant of arrest for the defendant property be issued; that due notice be given to all parties to appear and show cause why the forfeiture should not be decreed; that judgment be entered declaring the defendant property

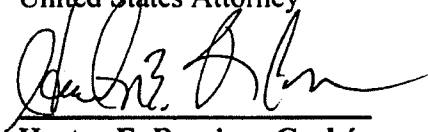
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condemned and forfeited to the United States of America for disposition according to law; and that the United States of America be granted such other and further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this 19th day of July 2019.

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney



Hector E. Ramirez-Carbó
Assistant U.S. Attorney
Chief, Civil Division
USDC No. 214902
hector.e.ramirez@usdoj.gov



David O. Martorani-Dale
Assistant U.S. Attorney
U.S.D.C.-PR 226004
david.o.martorani@usdoj.gov

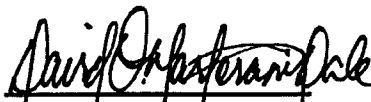
350 Carlos Chardón Street
Torre Chardón
Hato Rey, Puerto Rico 00918
Tel. (787) 766-5656
Fax. (787) 771 4050

VERIFIED DECLARATION

I, David O. Martorani-Dale, Assistant U.S. Attorney, for the District of Puerto Rico, declare under penalty of perjury as provided by Title 28, United States Code, Section 1746, the following:

That the foregoing Complaint is based on reports and information furnished to me by the FBI; that everything contained therein is true and correct to the best of my knowledge and belief.

Executed in San Juan, Puerto Rico, this 19th day of July 2019.

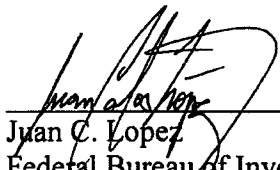

David O. Martorani-Dale
Assistant U.S. Attorney

VERIFIED DECLARATION

I, Juan C. Lopez, Special Agent, FBI, declare as provided by Title 28, United States Code, Section 1746, the following:

I have read the contents of the foregoing Complaint for Forfeiture in Rem and the attached unsworn declaration thereto, and I find the same to be true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Juan, Puerto Rico, this 19th day of July 2019.



Juan C. Lopez
Federal Bureau of Investigations
("FBI")

Attachment B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,
Plaintiff

v.

**A. \$1,000,000.00 CONTAINED IN
CHARLES SCHWAB & CO., INC.
ACCOUNT #9991-8933, IN THE
NAME OF DONALD KEITH
ELLISON, SEIZED ON APRIL 26,
2019, et. al.,**

Defendants.

CIVIL NO. 19-1693 (ADC)

**UNITED STATES' MOTION TO UNSEAL CIVIL FORFEITURE COMPLAINT AND
TO RESTRICT UNSWORN DECLARATION**

TO THE HONORABLE COURT:

COMES NOW, the United States of America, by the undersigned attorneys, and very respectfully states and prays as follows:

1. On July 19, 2019, the United States filed a Motion to Seal Civil Forfeiture Case pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure. See Docket No. 1.
2. Upon further review, the United States submits that the Verified Complaint for Forfeiture In Rem does not have to be sealed. Therefore, it is respectfully requested that the Verified Complaint for Forfeiture In Rem at Docket No. 2 be unsealed and that the Unsworn Declaration filed in support of the aforementioned complaint at Docket No. 2-1 remain sealed, limiting viewing to the United States and the Court. Said Unsworn Declaration reveals information that may adversely affect an ongoing investigation.

Civil No. 19-1693 (ADC)

WHEREFORE, the United States respectfully prays the Court to grant this request and unseal the Verified Complaint for Forfeiture In Rem at Docket No. 2, and that an ORDER issue directing that the Unsworn Declaration to remain under such restriction level until further order by the Court.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 24th day of July 2019.

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney

s/David O. Martorani-Dale
David O. Martorani-Dale
Assistant U.S. Attorney
U.S.D.C.-PR 226004
350 Carlos Chardón Street
Torre Chardón
Hato Rey, Puerto Rico 00918
Tel. (787) 766-5656
Fax. (787) 771 4050
david.o.martorani@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this 24th day of July 2019.

s/David O. Martorani-Dale
David O. Martorani-Dale
Assistant U.S. Attorney

Attachment C

07/25/2019	10	ORDER granting & Motion to Unseal Document & MOTION to Unseal Document <i>United States' Motion to Unseal Civil Forfeiture Complaint and to Restrict Unsworn Declaration</i> . Granted as requested. Signed by Judge Aida M. Delgado-Colon on 7/25/2019. (wrm) (Entered: 07/25/2019)
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Attachment D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL NO. 19-1693 (ADC)

- a. **\$1,000,000.00** contained in Charles Schwab & Co., Inc. account #9991-8933, in the name of Donald Keith ELLISON, seized on April 26, 2019;
- b. **\$3,425,512.93** contained in Charles Schwab & Co., Inc. account #9991-8933, in the name of Donald Keith ELLISON, seized on June 18, 2019;
- c. One (1) **Myco Boat Trailer Vin #1M9BA4031JB817150;**
- d. One (1) **Caterpillar Model D5K2LGP Tractor, Serial Number KYY01200;**
- e. One (1) **Caterpillar Model 320EL Hydraulic Excavator, Serial Number WBK02864;**
- f. **\$71,551.40** contained in checking account number **855356700** at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- g. **\$276,583.84** contained in savings account number **3653269077** at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- h. **\$100,306.70** contained in savings account number **317222591** at JP Morgan Chase, account is in the name of Keith Ellison and Jaklyn F. Garrett;
- i. One (1) **2018 Invincible 40-foot catamaran Hull #IVBC0035B818;**
- j. One (1) **2018 Ford F-150 "XL" crew cab pickup truck, VIN #1FTEW1E50JFB84787;**

Defendants.

**NOTICE OF VERIFIED CLAIM AND STATEMENT OF INTEREST
FOR CLAIMANT DONALD KEITH ELLISON**

Sonia I. Torres-Pabón (USDC-PR No. 209310)
MELLENDEZ TORRES LAW
MCS Plaza, Suite 1200
255 Ponce de Leon Ave.
San Juan, PR 00917

William Leone (*pro hac vice* to be filed)
Seth M. Kruglak (*pro hac vice* to be filed)
NORTON ROSE FULBRIGHT US LLP
1301 Avenue of the Americas
New York, NY 10019

Attorneys for Claimants Donald Keith Ellison and 259 Seahorse LLC

COMES NOW Claimant Donald Keith Ellison ("Ellison"), by and through counsel, and pursuant to 18 U.S.C. § 983(a)(4)(A) and Rule G(5)(a)(i) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, hereby files his Notice of Verified Claim and Statement of Interest in the above-styled matter in response to the United States' Verified Complaint for Forfeiture In Rem (the "Complaint").

Specifically, Ellison asserts an ownership and possessory interest in the following assets described in Paragraph 2 of the Complaint as follows:

- a. \$1,000,000.00 contained in Charles Schwab & Co., Inc. account #9991-8933, in the name of Donald Keith ELLISON, seized on April 26, 2019;
- b. \$3,425,512.93 contained in Charles Schwab & Co., Inc. account #9991-8933, in the name of Donald Keith ELLISON, seized on June 18, 2019;
- c. One (1) Myco Boat Trailer Vin #1M9BA4031JB817150;
- d. One (1) Caterpillar Model D5K2LGP Tractor, Serial Number KYY01200;
- e. One (1) Caterpillar Model 320EL Hydraulic Excavator, Serial Number WBK02864;
- f. \$71,551.40 contained in checking account number 855356700 at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- g. \$276,583.84 contained in savings account number 3653269077 at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- h. \$100,306.70 contained in savings account number 317222591 at JP Morgan Chase, account is in the name of Keith Ellison and Jakyn F. Garrett;
- i. One (1) 2018 Invincible 40-foot catamaran Hull #IVBC0035B818;
- j. One (1) 2018 Ford F-150 "XL" crew cab pickup truck, VIN

#1FTEW1E50JFB84787.

Ellison hereby claims the funds and property described above. In support of his claim, Ellison submits as, Exhibit A, a verified claim and statement of interest, which is hereby incorporated by reference and made part of this motion.

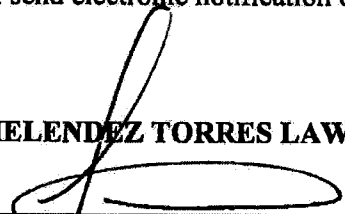
WHEREFORE, Claimant Ellison respectfully request this Honorable Court to take notice that a verified claim for the subject funds and property described in Exhibit A has been filed in the instant case.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this 16th day of August 2019.

I HEREBY CERTIFY that on this same date I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record.

MELLENDEZ TORRES LAW


Sonia L. Torres-Pabón (USDC-PR No. 209310)
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MCS Plaza, Suite 1200
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San Juan, PR 00917
Tel: 787-281-8100
Fax: 787-281-8310

NORTON ROSE FULBRIGHT US LLP

/s/ William J. Leone
William J. Leone (*pro hac vice* to be filed)
william.leone@nortonrosefulbright.com
Seth M. Kruglak (*pro hac vice* to be filed)
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1301 Avenue of the Americas
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Tel: 212-318-3000
Fax: 212-318-3400

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL NO. 19-1693 (ADC)

- a. **\$1,000,000.00** contained in Charles Schwab & Co., Inc. account #9991-8933, in the name of Donald Keith ELLISON, seized on April 26, 2019;
- b. **\$3,425,512.93** contained in Charles Schwab & Co., Inc. account #9991-8933, in the name of Donald Keith ELLISON, seized on June 18, 2019;
- c. One (1) Myco Boat Trailer Vin #1M9BA4031JB817150;
- d. One (1) Caterpillar Model D5K2LGP Tractor, Serial Number KYY01200;
- e. One (1) Caterpillar Model 320EL Hydraulic Excavator, Serial Number WBK02864;
- f. **\$71,551.40** contained in checking account number 855356700 at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- g. **\$276,583.84** contained in savings account number 3653269077 at JP Morgan Chase, account is in the name of Donald Keith Ellison;
- h. **\$100,306.70** contained in savings account number 317222591 at JP Morgan Chase, account is in the name of Keith Ellison and Jakyl F. Garrett;
- i. One (1) 2018 Invincible 40-foot catamaran Hull #IVBC0035B818;
- j. One (1) 2018 Ford F-150 "XL" crew cab pickup truck, VIN #1FTEW1E50JFB84787;

Defendants.

**VERIFIED CLAIM AND STATEMENT OF INTEREST
FOR CLAIMANT DONALD KEITH ELLISON**

Sonia I. Torres-Pabón (USDC-PR No. 209310)
MELLENDEZ TORRES LAW
MCS Plaza, Suite 1200
255 Ponce de Leon Ave.
San Juan, PR 00917

William Leone (*pro hac vice* to be filed)
Seth M. Kruglak (*pro hac vice* to be filed)
NORTON ROSE FULBRIGHT US LLP
1301 Avenue of the Americas
New York, NY 10019

Attorneys for Claimants Donald Keith Ellison and 259 Seahorse LLC

COMES NOW Claimant Donald Keith Ellison, and pursuant to 28 U.S.C. § 1746 and the laws of the United States of America, does declare under penalty of perjury the following:

1. I am the sole and lawful owner of the property identified in Paragraphs 2(a), 2(b), 2(d), 2(e), 2(f), 2(g) and 2(j), of the Verified Complaint for Forfeiture In Rem filed in connection with the above-styled matter (the "Complaint"), described as follows:

a. \$1,000,000.00 contained in Charles Schwab & Co., Inc. account #9991-8933, in the name of Donald Keith ELLISON, seized on April 26, 2019;

b. \$3,425,512.93 contained in Charles Schwab & Co., Inc. account #9991-8933, in the name of Donald Keith ELLISON, seized on June 18, 2019.

d. One (1) Caterpillar Model D5K2LGP Tractor, Serial Number KYY01200;

e. One (1) Caterpillar Model 320EL Hydraulic Excavator, Serial Number WBK02864;

f. \$71,551.40 contained in checking account number 855356700 at JP Morgan Chase, account is in the name of Donald Keith Ellison;

g. \$276,583.84 contained in savings account number 3653269077 at JP Morgan Chase, account is in the name of Donald Keith Ellison;

j. One (1) 2018 Ford F-150 "XL" crew cab pickup truck, VIN #1FTEW1E50JFB84787.

2. 259 Seahorse LLC ("Seahorse") is a limited liability company that I formed under the laws of the State of Oklahoma on February 26, 2018. I am the sole member and manager of Seahorse. As its sole member and manager, I have authority and control over all of Seahorse's property. On July 17, 2018, acting as the sole member and manager of Seahorse, and on its behalf, I authorized the purchase of the property described in Paragraphs 2(c) and 2(i) of the Complaint. As such,

Seahorse is the lawful owner of the property identified in Paragraphs 2(c) and 2(i) of the Complaint, described as follows:

c. One (1) Myco Boat Trailer Vin #1M9BA4031JB817150;

i. One (1) 2018 Invincible 40-foot catamaran Hull #IVBC0035B818.

The funds used to purchase the aforementioned property were provided by me.

3. I am one of two owners of the funds identified in Paragraph 2(h) of the Complaint. The other owner is my wife Jaklyn F. Garrett. I opened this account and have access, control, and a possessory interest in it. This account is described in the Verified Complaint as follows:


h. \$100,306.70 contained in savings account number 317222591 at JP Morgan Chase, account is in the name of Keith Ellison and Jaklyn F. Garrett.

4. The funds contained in each of the accounts listed above were provided by me as a result of lawful employment and investments. I purchased all of the aforementioned property using funds obtained by me as a result of lawful employment and investments.

5. By virtue of the ownership and possessory interests outlined in the foregoing, I am entitled to file the instant claim seeking the return of the subject funds and property, which claim is hereby made.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on: August 16, 2019


Donald Keith Ellison